

RICHARD C. CORBYN

IBLA 77-321

Decided September 28, 1977

Appeal from decision of the Arizona State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease A-8888 which had terminated for failure to pay annual rental timely.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A lessee requesting reinstatement of an oil and gas lease terminated for failure to pay rental timely must show that he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail in order to demonstrate reasonable diligence under 30 U.S.C. § 188(c) (1970).

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rental

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse for reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

APPEARANCES: Richard C. Corbyn, pro se.

## OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Richard C. Corbyn appeals from the April 14, 1977, decision of the Arizona State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of noncompetitive oil and gas lease A-8888 which had automatically terminated by operation of law for failure to pay annual rental on or before the anniversary date of the lease, April 1, 1977. The rental payment was postmarked April 4 and arrived at the State Office on April 8.

In his petition for reinstatement, appellant stated that he did not mail the rental payment before April 1 because he had not received a billing notice from BLM. He alleged that he had notified the BLM State Office of a change of address but that the State Office had not noted the change in its records.

In its decision, the State Office stated that it could find no indication of an address change notification from appellant. It further stated that billing notices are only a courtesy and that lessees are obligated to pay rental timely whether they receive a notice or not. The State Office therefore found that appellant did not show that his failure to pay rental timely was either justifiable or not due to a lack of reasonable diligence, as required by 30 U.S.C. § 188(c) (1970) for the reinstatement of a terminated oil and gas lease.

In his Statement of Reasons, appellant again argues that he was waiting for receipt of the courtesy billing notice. When the notice had not arrived by April 1, the date the rental was due, he telephoned BLM the next business day, April 4, to inquire what happened. He then mailed the payment. Appellant asserts that the address on the check for the 1976 payment, as well as the return address on the envelope, was his new address. He also asserts that he enclosed with the 1976 payment a piece of paper asking BLM to change his address to "the new Texas address." He requested reinstatement based on these facts. We must deny this request and affirm the decision of the State Office.

[1] Congress has declared that an oil and gas lease terminated for failure to pay annual rental on or before the anniversary date may be reinstated, among other requirements, only if the failure to pay timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the mail. 43 CFR 3108.2-1(c)(2). By mailing his rental payment after it was due, appellant cannot show reasonable diligence. Apostolos Paliombeis, 30 IBLA 153 (1977); Bobbie Arnold, 24 IBLA 352 (1976). He therefore must demonstrate that his failure to pay timely was justifiable.

[2] Failure to pay rental timely may be justifiable when it is caused by factors outside the lessee's control, which were the proximate cause of the failure. Adolph F. Muratori, 31 IBLA 39 (1977); Constitution Petroleum Co. Inc., 25 IBLA 319 (1976). This Board has held many times that reliance on the receipt of a courtesy billing notice from BLM is not a justifiable excuse for failure to pay rental timely. E.g., Albert DiGiulio, 26 IBLA 169 (1976); Bobbie Arnold, *supra*; Louis J. Patla, 10 IBLA 127 (1973). The failure of BLM to change a lessee's address of record resulting in a lessee not receiving a courtesy billing notice, as here, or in the notice arriving late, does not relieve the obligation of the lessee to pay his rental timely. Albert DiGiulio, *supra*; Bobbie Arnold, *supra*. Therefore, appellant's petition for reinstatement was properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

